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November 8, 2021

**BY ECF**

The Honorable Norman K. Moon  
United States District Court  
Western District of Virginia  
255 West Main Street  
Charlottesville, VA 22902

*Re: Sines et al. v. Kessler et al.*, No. 3:17-cv-00072 (NKM) (JCH)

Dear Judge Moon:

We respectfully request that the Court allow the jury to see Plaintiffs' Exhibit PX-2777. (Ex. A.) PX-2777 is a July 2017 article that was published on Defendant Andrew Anglin's alt-right website, the *Daily Stormer*, and to which a link was circulated on Discord in advance of Unite the Right, including on the "#leadership\_discussion" channel used by multiple Defendants. Plaintiffs' remaining expert witness, Dr. Peter Simi, intends to rely on this article—which was cited in his expert report, ECF No. 832-2 at 49—during his forthcoming trial testimony regarding the White Supremacist Movement. Unfortunately, however, Plaintiffs will be unable to authenticate and introduce this document through Mr. Anglin, who has defaulted in this matter and has failed to appear at trial, and the article was not written by and therefore cannot be authenticated by Defendant Robert "Azzmador" Ray, who also failed to participate in this case. Given these circumstances, the Court should allow the jury to see PX-2777 under Federal Rule of Evidence 703 because the probative value of the article substantially outweighs its prejudicial effect (which is negligible given Mr. Anglin's default in this litigation).

## **A. Background**

Defendant Andrew Anglin is the founder and publisher of the *Daily Stormer* website, an online publication named after a Nazi propaganda tabloid *Der Stürmer*. See Nov. 3, 2021 Trial Tr. at 156:7-16 (testimony of Dr. Deborah Lipstadt). Defendant Moonbase Holdings LLC is a corporation registered by Mr. Anglin that operates and receives donations for the *Daily Stormer*. Second Am. Compl. ¶¶ 25-26. Mr. Anglin has described the *Daily Stormer* "as a hardcore front for the conversion of masses into a pro-white, Anti-Semitic ideology, to sell global white supremacy, and to make a racist army." ECF No. 1006, Mem. Op. & Order Granting Mot. for

Evidentiary Sanctions Against Def. Ray, at 3-4 (quotations omitted) (citing Second Amended Complaint). “Unite the Right featured prominently on the Daily Stormer website.” *Id.* at 4. Along with co-Defendant Robert “Azzmador” Ray, Mr. Anglin published numerous articles on the *Daily Stormer* “command[ing] the Daily Stormer community to attend” Unite the Right and “instructed followers to bring tiki torches, pepper spray, flag poles, flags, and shields.” *Id.* at 4. Despite being properly served with the Complaint, Defendants Anglin and Moonbase Holdings LLC have never appeared or participated in this action. On March 14, 2018, the Clerk of Court entered default against Defendants Anglin and Moonbase Holdings LLC. ECF No. 268.

PX-2777 is a *Daily Stormer* article entitled “Operational Security for Right Wing Rallies,” written by an individual identified as “weev.” PX-2777 at 1 (copy attached). The article, published just a few weeks before Unite the Right, describes “best practices” for the “upcoming event in Charlottesville,” and instructs readers to bring “burner phones” to Unite the Right and use the messaging application Signal, which deletes messages “after 24 hours.” *Id.* at 1-2. The article also instructs readers not to “make racially charged statements” on digital accounts and to “save the small talk and hate speech for the bar,” and to dress “like clean cut chads in polo shirts” rather than the “paramilitary.” *Id.* at 3.

Links to the article were circulated on Discord in advance of Unite the Right. Specifically, on July 31, 2017, Defendant Ray posted a link to the article. Ex. B (PX-375). On the same day, user “RCO Nick-TX” posted a link to the article in the “#leadership\_discussion” channel—to which Defendants Jason Kessler, Elliott Kline, and Matthew Heimbach had access, as well as Thomas Ryan Rousseau of Defendant Vanguard America and coconspirator Michael Chesny (a/k/a “Tyrone”)—recommending it as a “[r]eally excellent article by Weev on Operational Security.” Ex. C.

Dr. Peter Simi, Plaintiffs’ expert on white supremacy and the White Supremacist Movement, intends to testify about PX-2777. More specifically, Dr. Simi will testify that white supremacist groups intentionally keep their internal discussions secret while projecting a nonviolent and mainstream public image, a strategy also known as “optics,” and relatedly, “front-stage vs. back-stage” behavior. *See* ECF No. 832-2, at 13, 45-46. Dr. Simi is also expected to testify that the Defendants’ actions are consistent with these practices. In forming that opinion, Dr. Simi expressly relied on many of the statements made in PX-2777, including the directives not to “make racially charged statements” and to “bring your burner phones.” *See id.* at 49.

### **B. The Court Should Allow PX-2777 to be Disclosed to the Jury under Rule 703**

Unlike an ordinary witness, “an expert is permitted wide latitude to offer opinions, including those that are not based on first-hand knowledge or observation.” *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 591 (1993). Indeed, under Rule 703, an expert witness may base his or her opinion on “facts or data” that are otherwise inadmissible, and any such facts or data may be disclosed to the jury “if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.” Fed. R. Evid. 703; *Hambrick ex rel. Hambrick v. Ken-Bar Mfg. Co.*, 422 F. Supp. 2d 627, 639 (W.D. Va. 2002) (“Even if particular [facts or data] is otherwise inadmissible under the Federal Rules, a trial court may still admit them into evidence if ‘the court determines that their probative value in assisting the jury to evaluate the expert’s

opinion substantially outweighs their prejudicial effect.”). In applying that rule, many “courts have held that ... experts [may] base opinion testimony on evidence that is inadmissible under the hearsay, authentication, and best evidence rules.” Wright & Miller, 29 *Fed. Prac. & Proc. Evid.* § 6273 Scope of Rule 703 (2d ed.) (collecting cases). PX-2777 easily qualifies for admission under Rule 703.

*First*, Dr. Simi’s testimony about PX-2777 is highly probative and will undoubtedly assist the jury concerning the White Supremacist Movement and its relationship to this case. *See United States v. Leeson*, 453 F. 3d 631, 638 (4th Cir. 2006). PX-2777 is a first-hand source of information published on a Defendant’s website about the tactics and strategies employed at “Right Wing Rallies” (such as Unite the Right). Furthermore, in advance of Unite the Right, PX-2777 was circulated on Discord both by a Defendant (Ray) and in a “leadership” channel regularly used by several Defendants and their coconspirators. Experts who study white supremacy routinely rely on these types of primary sources in forming their expert opinions. *E.g.*, ECF No. 832-2 at 3-8, 12, 20-22 (surveying methodology and scholarship relying on primary sources); *see also Hambrick*, 422 F. Supp. 2d at 639 (“It almost goes without saying that survey researchers must rely upon surveys in order to render opinions.”). And, as explained above, Dr. Simi in fact relied upon and quoted the statements made in PX-2777 in rendering his opinion. ECF No. 832-2 at 46.

*Second*, the probative value of PX-2777 substantially outweighs any prejudicial effect caused by its admission. As an initial matter, any prejudicial effect is negligible because Defendants Anglin and Moonbase Holdings, the publisher and operator of the *Daily Stormer*, have defaulted—thereby forfeiting their rights in this litigation. *Cf. Globalsantafe Corp. v. Globalsantafe.Com*, 250 F. Supp. 2d 610, 612 n.3 (E.D. Va. 2003) (“Upon default, facts alleged in the complaint are deemed admitted ....”). And any lingering prejudice (if any) to the appearing Defendants “can be cured by the opportunity” to cross-examine Dr. Simi. *Hambrick*, 422 F. Supp. 2d at 639; *see also Leeson*, 453 F. 3d at 638 (“The district court did not abuse its discretion in finding that such probative value substantially outweighed any prejudicial effect of the statements, especially given that Leeson had the opportunity to cross-examine Dr. Dana ....”). These are precisely the circumstances that allow documents relied on by an expert to be shown to a jury under Rule 703. *See Hambrick*, 422 F. Supp. 2d at 639; *Leeson*, 453 F. 3d at 638; *Wood v. Arnold*, No. 6:18-cv-00053, 2019 WL 8281292, at \*1 (W.D. Va. Apr. 16, 2019) (Moon, J.) (“[T]he testimony in question will be admitted under Rule 703 because the probative value in assisting the jury understand Dr. Gravatte’s opinion substantially outweighs the risk of prejudice.”).

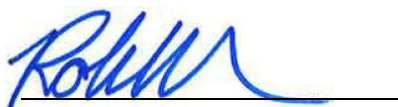
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For the foregoing reasons, the Court should allow the jury to see PX-2777 under Rule 703 during the testimony of Plaintiffs' expert Peter Simi.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Roberta', is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2021, I served the following via electronic mail:

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I hereby certify that on November 8, 2021, I also served the following by electronic mail:

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I hereby certify that on November 9, 2021, I will serve the following by hand:

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